

Duke, Daphne

284142

From: Carrie Schurg <caschurg@AustinRogersPA.com>

Sent: Friday, April 12, 2019 10:12 AM

To: Minges, Josh <Josh.Minges@psc.sc.gov>

Cc: Richard Whitt <rlwhitt@austinrogerspa.com>; J. Ashley Cooper <ashleycooper@parkerpoe.com>; Matthew Gissendanner <matthew.gissendanner@scana.com>

Subject: [External] Docket 2018-401-E - Beulah Solar/Eastover Solar

This email was dictated by Richard Whitt:

Josh:

My clients are responding to an email from the Company received almost eight hours after your email below, which instructed my clients and the Company as parties, as to the next steps in this case. Namely, the Company's email at **10:00 p.m., last evening**, which ignored your decision and completely reargued the merits of this case.

1. In your email below you gave my clients and the Company instructions as parties, as to what would occur next. We accepted your decision, but the Company once again attempts to steer the course of this case by stating that, "...fairness however dictates one of two possible courses of action." The Company then sets forth two numbered courses of action completely inconsistent with your instructions to my clients and the Company in your email below.
2. The Company again repeats its unsupported allegation that the IAs in dispute and pending before this Commission, are terminated. The Company, for the second time in emails to you, intentionally misleads you, as Hearing Officer, by stating, "...both Beulah and Eastover are before the Commission asking the Commission to revive their expired IAs..." That statement made for the second time, is factually incorrect. **Beulah Solar/Eastover Solar are not before this Commission in any filing, asking this Commission to "...revive their expired IAs..."** My clients are at a loss to understand how the Company continues to make this argument, which ignores (i) despite two attempts by the Company to state otherwise, Beulah Solar/Eastover Solar have never asked this Commission to, "...revive their expired IAs..." (ii) the fact that this case is still pending before this Commission and it's the Commission's decision and not the Company's to decide if the IAs are ever terminated (iii) my clients Request for Modifications and Motions to Maintain Status Quo are still pending before this Commission (iv) Provision 12.12 of the Company's IA gave my clients the Right to seek Modification, which is still pending before this Commission and (v) S.C. Code Ann. Section 58-27-980, (1976, as amended), which gives this Commission the authority to modify, amend, change or annul the Company's IAs.
3. The Company's email last evening further misleads by the following statement, "Further, neither Beulah nor Eastover received injunctive relief...." Both Beulah Solar and Eastover Solar have timely filed (prior to Milestone Payment #1), Motions to Maintain Status Quo, with both Motions still pending before this Commission. The Company's statement ignores the fact that this **Commission has not ruled on those two pending Motions to Maintain Status Quo**. Therefore, it is not factually correct to state that, "...neither Beulah nor Eastover received injunctive relief...."
4. My clients' Motion for Protection, which was timely filed before any discovery responses were due is pending. That Motion, *inter alia*, is important because voluminous discovery from the Company is not appropriate when the nexus of my clients' case is the Company's use of unapproved "curtailment language" in its IAs and elsewhere. Improper discovery to my clients will not aid this Commission in its decision, as to the Company's improper actions in using unapproved "curtailment language" in its IAs.

Respectfully Submitted,
Richard Whitt.

From: Minges, Josh <Josh.Minges@psc.sc.gov>
Sent: Thursday, April 11, 2019 2:23 PM
To: Matthew Gissendanner <matthew.gissendanner@scana.com>
Cc: Richard Whitt <rlwhitt@AustinRogersPA.com>; Snowden, Ben (BSnowden@kilpatricktownsend.com)
 <BSnowden@kilpatricktownsend.com>; J. Ashley Cooper <ashleycooper@parkerpoe.com>; Carrie Schurg
 <caschurg@AustinRogersPA.com>
Subject: RE: [External] RE: Time Sensitive//Docket 2018-401-E - Beulah Solar/Eastover Solar

Parties:

Since the discovery conference will not take place on Monday, we will be bringing the outstanding motions up for the Commission's discussion at the May 1 business meeting.

Josh

From: GISSENDANNER, MATTHEW W <MATTHEW.GISSENDANNER@scana.com>
Sent: Thursday, April 11, 2019 1:27 PM
To: Minges, Josh <Josh.Minges@psc.sc.gov>
Cc: Richard Whitt <rlwhitt@austinrogerspa.com>; Snowden, Ben (BSnowden@kilpatricktownsend.com)
 <BSnowden@kilpatricktownsend.com>; J. Ashley Cooper <ashleycooper@parkerpoe.com>; Carrie Schurg
 <caschurg@AustinRogersPA.com>
Subject: [External] RE: Time Sensitive//Docket 2018-401-E - Beulah Solar/Eastover Solar
Importance: High

Josh:

If Mr. Whitt and his clients are unwilling to work toward resolution of the discovery issues as directed by the Standing Hearing Officer Directive, dated March 18, 2019, SCE&G respectfully requests that the Commission re-establish the testimony deadlines and hearing date and rule on the Company's motions to compel discovery. SCE&G's discovery in this matter is entirely proper. Alternatively, if Mr. Whitt and his clients continue to desire not to move forward with these two matters that they (not SCE&G) initiated, the Company respectfully requests that the Commission grant the Company's presently pending motion to dismiss in each of these dockets.

The PPAs were terminated for Beulah's and Eastover's failure to make a required milestone payment, not for anything to do with the "curtailment language." As such, the "stakeholder process" is not going to lead to a reactivation of Mr. Whitt's clients' terminated PPAs as nothing in the stakeholder process will cure Mr. Whitt's clients' failure to make such payments when due.

Matt

From: Carrie Schurg <caschurg@AustinRogersPA.com>
Sent: Thursday, April 11, 2019 1:13 PM
To: Josh Minges (Josh.Minges@psc.sc.gov) <Josh.Minges@psc.sc.gov>
Cc: Richard Whitt <rlwhitt@AustinRogersPA.com>; Snowden, Ben (BSnowden@kilpatricktownsend.com)
 <BSnowden@kilpatricktownsend.com>; ashleycooper@parkerpoe.com; GISSENDANNER, MATTHEW W (SEG Services -
 6) <MATTHEW.GISSENDANNER@scana.com>

Subject: Time Sensitive//Docket 2018-401-E - Beulah Solar/Eastover Solar

Importance: High

***This is an EXTERNAL email from Carrie Schurg (caschurg@austinrogerspa.com). Please do not click on a link or open any attachments unless you are confident it is from a trusted source.

This email was dictated by Richard Whitt:

Josh:

1. I write to you concerning the April 15, 2019 meeting that was previously scheduled in this matter.
2. The Order holding this Docket in Abeyance, referenced discovery issues and the stakeholder process that began on March 7, 2019.
3. **As for Discovery Issues** – My clients, upon reflection, do not see any basis for settlement of discovery issues. As I wrote in my April 8, 2019 email, “The nexus for Beulah Solar/Eastover Solar’s Request for Modification was Beulah Solar/Eastover Solar’s allegations of wrong doings by the Company [the Company’s use of unapproved ‘curtailment language’ in its Interconnection Agreements] and no amount of punitive discovery propounded by the Company to Beulah Solar/Eastover Solar will assist this Commission in its determination of the Company’s improper actions.”
4. **As for the Stakeholder Process** – The Company and the South Carolina Solar Business Alliance, Inc., are both participating in the stakeholder process, which began March 7, 2019, with the initial meeting. I am happy to report that the second meeting in the stakeholder process has been **scheduled for April 29, 2019** from 10:00 a.m., until 1:30 p.m. ORS and the Company are fully engaged in the stakeholder process and my clients are very hopeful that the conclusion will lead to modifications of the “curtailment language” currently utilized by the Company in its IAs, which will lead to this Docket being administratively closed, without further expense to the parties.
5. Based on the foregoing, I do not believe that the meeting on April 15, 2019, will be worthwhile and in the event this meeting should still be held, I request that the meeting be held by telephone, to avoid Ashley having to travel to Columbia to Charleston and to lessen the expense to my clients.
6. Please advise and this email is,

Respectfully Submitted,
 Richard Whitt,
 Ben Snowden,
 As Counsel for Beulah Solar, LLC and
 Eastover Solar LLC.